

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Gaines Analyst: Angela Raygoza Bill Number: AB 424  
Related Bills: See legislative history. Telephone: 845-7814 Amended Date: August 1, 2007  
Attorney: Douglas Powers Sponsor: \_\_\_\_\_

**SUBJECT:** Defensible Space Fire Protection Credit/Tahoe Regional Planning Agency Property Owners

### SUMMARY

This bill would provide a tax credit for amounts paid or incurred to create defensible space around specified properties.

### SUMMARY OF AMENDMENTS

The August 1, 2007, amendments removed provisions related to wetland mitigation banks and replaced those provisions with language that would provide a tax credit for amounts paid or incurred to create defensible space, as specified, for wildfire protection.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to encourage taxpayers within the Tahoe Basin in the State of California to protect their homes from wildfires.

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2007, and before January 1, 2011.

### POSITION

Pending.

### Summary of Suggested Amendments

Amendments have been provided to more clearly define the parameters of the defensible space credit and to correct technical errors.

#### Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

#### Department Director

#### Date

Selvi Stanislaus

8/20/07

## ANALYSIS

### FEDERAL/STATE LAW

Current federal and state tax laws provide various tax credits designed to provide tax relief for taxpayers that incur certain expenses (e.g., child and dependent care credits) or to influence business practices and decisions or to achieve social goals.

Current federal law defines the Tahoe Regional Planning Agency (TRPA) as several counties that border the Tahoe basin. This definition includes partial jurisdictions, such as portions of El Dorado and Placer County.

Current state law requires landowners in mountainous, forest, brush, and grass-covered lands to maintain a 30-foot firebreak around homes, buildings, and structures. In addition, current state law requires that around and adjacent to an occupied dwelling or occupied structure, *additional* fire protection or firebreaks out to 100 feet from the dwelling or structure or to the property line be maintained. Greater distances may be required by local ordinance, rule, or regulation.

The TRPA is a quasi-federal jurisdiction formed by an agreement adopted between California and Nevada, embodied in the Tahoe Regional Planning Compact and Public Law 96-551. Accordingly, TRPA has preemptive jurisdiction over establishment of firebreaks.

Under the Code of Civil Procedure, a “dwelling” is defined as a place where a person resides and may include, but is not limited to, the following:

- A house together with the outbuildings and the land upon which they are situated.
- A mobile home together with the outbuildings and the land upon which they are situated.
- A boat or other waterborne vessel.
- A condominium, as defined in Section 783 of the Civil Code.

### THIS BILL

For each taxable year beginning on or after January 1, 2007, and before January 1, 2011, this bill would provide a tax credit in an amount equal to 25% of the costs paid or incurred by a taxpayer to create a defensible space under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL).

This bill would define the following terms:

- “Defensible Space” means the area created by removing all brush, flammable vegetation, and combustible growth that is located within at least 100 feet of the structural components of a dwelling located on a qualified property.
- “Dwelling” has the same meaning as described in the Code of Civil Procedure.
- “Fire Department” means the local fire department that has jurisdiction over the qualified property.

- “Licensed Contractor” means a contractor with an active license issued by the Contractors’ State License Board.
- “Qualified costs” means any costs paid or incurred during the taxable year, not to exceed \$2,000 per qualified property, to a licensed contractor to create defensible space.
- “Qualified property” means any parcel of real property located within the California portion of the region, as defined in Public Law 96-551 and the Tahoe Regional Planning Compact, upon which a dwelling, a house, or residential apartment building, is located.
- “Qualified taxpayer” means any taxpayer that owns qualified property.
- “Written Certification” means a written evaluation by the fire department that certifies the establishment of defensible space, provided that the certification shall be obtained within 30 days after completion of the work establishing the defensible space. The taxpayer shall retain a copy of the certification and provide it to the Franchise Tax Board (FTB) upon request.

This bill specifies that a deduction would be allowed for the same expenses for which the credit is allowed. The credit could reduce the net tax or tax below tentative minimum tax.

This bill would allow unused credits to be carried over for five years.

This credit would be repealed as of December 1, 2011.

#### **IMPLEMENTATION CONSIDERATIONS**

This bill uses terms such as “written certification”, “defensible space”, and “qualified taxpayer” that are not identified in the language. The absence of terms could lead to disputes with taxpayers and would complicate the administration of this credit.

#### **TECHNICAL CONCERNS**

Amendments 1-4, 6-11, 15-18, and 20-25 have been provided to more clearly define the parameters of the defensible space credit. Amendments 5, 12-14, 19, and 26-28 correct technical errors.

#### **LEGISLATIVE HISTORY**

AB 62 (Nava, 2007/2008) and SB 38 (Battin, 2007/2008) would allow taxpayers disaster loss treatment for losses sustained in Ventura, Riverside, and El Dorado counties as a result of the wildfires that occurred in September, 2006, October, 2006, and June, 2007. AB 62 is currently in Senate Appropriations Committee and SB 38 is currently in Assembly Appropriations Committee.

## OTHER STATES INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. These states do not have a credit comparable to the credit this bill would allow.

## FISCAL IMPACT

This bill would not significantly impact the department's costs.

## ECONOMIC IMPACT

### Revenue Estimate

This bill would result in the following revenue losses:

Revenue Impact for AB 424 Operative Tax Years Beginning On or After January 1, 2007 Enactment Assumed After September 1, 2007 (\$ in Millions)			
Fiscal Year	2007-08	2008-09	2009-10
Defensible Space Credit	-\$0.5	-\$2	-\$2

This estimate does not consider any possible changes in employment, personal income, or gross state product that could result from this bill.

### Revenue Discussion

This bill would allow a tax credit for the annual costs paid or incurred to create a "defensible space" within a qualified property. The revenue impact for this bill would be determined by the amount of qualified costs incurred by qualified taxpayers and the amount of credits that can be applied to reduce tax liabilities.

The estimate was developed in the following steps:

- Estimated approximately 50,000 qualified properties within the California Tahoe Basin
- Assumed that 25% of targeted owners would incur qualified costs by hiring a licensed contractor (i.e., tree service, excavation, debris removal, landscaper) to establish defensible space each year.
- Based on the lot size and work needed—ranging from \$500 to \$2,000, it is estimated that the average cost to create a defensible space would be \$720.
- It is estimated the average credit would be \$180 (\$720 average cost x 25% credit for costs paid or incurred).
- Assumed rate at which targeted taxpayers would claim the proposed credit: 70% for 2007, increasing each year up to 95% in 2010 (first year participation is reduced further to reflect late enactment).

For tax year 2007, it is estimated that only 5% of targeted taxpayers would benefit from the proposed credit due to the 30-day certification requirement and late enactment. This results in roughly \$450,000 of credits that would be claimed in the initial taxable year (50,000 eligible structures x 5% of total eligible claimants x \$180 average credit). In subsequent tax years, an estimated 25% of targeted taxpayers would claim the proposed credit, resulting in approximately \$2 million of annual revenue losses (50,000 x 25% x \$180 credit = \$2.3 million). It is assumed 90% of credits are applied in the year generated. Calendar year estimates are converted to fiscal year cash flow estimates.

## **POLICY CONCERN**

By allowing this credit in addition to any otherwise allowable deduction, this bill would allow taxpayers in certain circumstances to claim two tax benefits for the same item of expense.

This bill would provide an incentive for complying with existing law which requires clearance of debris and brush within 100 feet of a dwelling. Additionally, El Dorado County is currently providing financial assistance to property owners to remove hazardous trees in areas affected by the Angora Wildfire of June, 2007.

## **LEGISLATIVE STAFF CONTACT**

Angela Raygoza  
Franchise Tax Board  
(916) 845-7814  
[angela.raygoza@ftb.ca.gov](mailto:angela.raygoza@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
(916) 845-6333  
[brian.putler@ftb.ca.gov](mailto:brian.putler@ftb.ca.gov)

Analyst	Angela Raygoza
Telephone #	916-845-7814
Attorney	Douglas Powers

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 424  
As Amended August 1, 2007

AMENDMENT 1

On page 7, line 10, after "Section 17039," insert:  
to create a defensible space

AMENDMENT 2

On page 7, line 11, strike:  
25 percent of

AMENDMENT 3

On page 7, line 12, after "incurred," insert:  
by a qualified taxpayer

AMENDMENT 4

On page 7, line 12, after "taxable year" insert:  
not to exceed \$500 per qualified property.

AMENDMENT 5

On page 7, line 17, strike:  
at least

AMENDMENT 6

On page 7, line 20, after "procedure" insert:  
, excluding boats and waterborne vessels.

AMENDMENT 7

On page 7, line 25-28, strike the definition of "qualified cost" and  
insert:

(5) Qualified costs" means 25% of costs paid or incurred to a licensed contractor by a qualified taxpayer for the creation of defensible space around a qualified property.

AMENDMENT 8

On page 7, line 28, after "space," insert:

,as evidenced by records and documents including written certification.

AMENDMENT 9

On page 7, line 29, strike "any parcel of real property" and insert:

"a dwelling"

AMENDMENT 10

On page 7, line 31-32, strike:

,upon which a dwelling, a house, or residential apartment building,

AMENDMENT 11

On page 8, line 3,insert:

(c): "No credit shall be allowed pursuant to this section unless a qualified taxpayer provides written certification upon request to the Franchise Tax Board."

AMENDMENT 12

On page 8, line 3 strike "(c)" and insert:

(d)

AMENDMENT 13

On page 8, line 6, strike (d) and insert:

(e)

AMENDMENT 14

On page 8, line 10, strike (e) and insert:

(f)

AMENDMENT 15

On page 11, line 40, after "Section 23036," insert:

to create a defensible space

AMENDMENT 16

On page 12, line 1, strike:

25 percent of

AMENDMENT 17

On page 12, line 2, after "incurred," insert:

by a qualified taxpayer

AMENDMENT 18

On page 12, line 2, after "taxable year" insert:

not to exceed \$500 per qualified property.

AMENDMENT 19

On page 12, line 7, strike:

at least

AMENDMENT 20

On page 12, line 10, after "procedure" insert:

, excluding boats and waterborne vessels.

AMENDMENT 21

On page 12, line 15-18, strike the definition of "qualified cost" and insert:

(5) "Qualified costs" means 25% of costs paid or incurred to a licensed contractor by a qualified taxpayer for the creation of defensible space around a qualified property.

AMENDMENT 22

On page 12, line 18, after "space," insert:

, as evidenced by records and documents including written certification.

AMENDMENT 23



On page 12, line 19, strike "any parcel of real property" and insert:  
"a dwelling"

AMENDMENT 24

On page 12, line 21-23, strike:  
,upon which a dwelling, a house, or residential apartment building,

AMENDMENT 25

On page 12, line 32, insert:  
(c): "No credit shall be allowed pursuant to this section unless a qualified taxpayer provides written certification upon request of the Franchise Tax Board."

AMENDMENT 26

On page 12, line 32 strike "(c)" and insert:  
(d)

AMENDMENT 27

On page 12, line 35, strike (d) and insert:  
(e)

AMENDMENT 28

On page 12, line 39, strike (e) and insert:  
(f)